

ESTTA Tracking number: **ESTTA478329**

Filing date: **06/15/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055515
Party	Plaintiff Tony M. Lamoureux
Correspondence Address	CHRISTOPHER R GANTER CHRISTOPHER R GANTER LLC 5184 CALDWELL MILL ROAD, SUITE 204-425 BIRMINGHAM, AL 35242 UNITED STATES Crgant@aol.com
Submission	Motion for Default Judgment
Filer's Name	Christopher R. Ganter
Filer's e-mail	Crgant@aol.com
Signature	/s/ Christopher R. Ganter
Date	06/15/2012
Attachments	061512MtnEntryDefault.pdf (3 pages)(79341 bytes) 061512AffidavitMtnEntryDefault.pdf (4 pages)(170018 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark Registration No. **3971868**)
)
For the mark **LIPOTONIX**)
)
Date registered May 31, 2011)
)
)
Tony M. Lamoureux,)
)
Petitioner,)
)
v.)
)
Gary D. Osborn)
)
Registrant.)

MOTION FOR ENTRY OF DEFAULT

Comes Now Petitioner Tony M. Lamoureux and hereby requests the Clerk to enter a default against the registrant, Gary D. Osborn on the basis that the record in this case demonstrates that there has been a failure to plead or otherwise defend as provided by Rule 55(a) of the Federal Rules of Civil Procedure and the Trademark Board Manual of Procedure §§ 312 & 508. In support thereof, Petitioner states the following:

1. On April 24, 2012 Petitioner Tony M. Lamoureux filed a Petition to Cancel the mark LIPOTONIX with the Trademark Trial and Appeal Board. (See TTABVue Cancellation No. 92055515 and the Affidavit of Christopher R. Ganter, attached hereto as Exhibit 1).

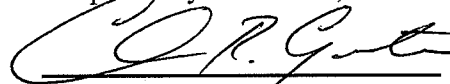
2. On April 24, 2012, Petitioner's counsel served by U.S. Post Office Express Mail a copy of said Petition to Cancel. (See Affidavit of Christopher R. Ganter, paragraph 3, and Exhibit 1-A attached thereto, U.S. Express Mail Label and Receipt).

3. On April 25, 2012 Registrant Gary D. Osborn d/b/a Apothecure, Inc., or an authorized agent, was served with a copy of the said Petition to Cancel and was signed for by a B. McDonald at the address provided by the Registrant to the USPTO. (See Affidavit Of Christopher R. Ganter, paragraph 4, www.usps.com track and confirm for Mail Label EG883702522US, attached thereto as Exhibit 1-B).

4. More than 40 days have passed from the filing of the Petition to Cancel and Registrant has failed to answer, plead or otherwise defend in this action. Petitioner is entitled to an entry of default pursuant to Federal Rules of Civil Procedure 55(a). (See TTABVUE filings for Cancellation No. 92055515).

WHEREFORE, PREMISES CONSIDERED, Petitioner Tony M. Lamoureux respectfully seeks the entry of default by the interlocutory attorney and/or the clerk of the Trademark Trial and Appeal Board against Registrant Gary D. Osborn.

Respectfully submitted,



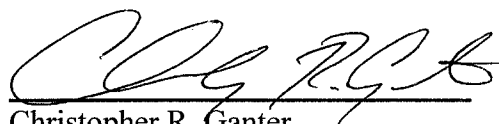
Christopher R. Ganter
Christopher R. Ganter, LLC
5184 Caldwell Mill Road
Suite 204-425
Birmingham, Alabama 35242
205-266-0279
Crgant@aol.com

Attorney for Tony M. Lamoureux

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 2.119, I hereby certify on June 15, 2012 that a true and correct copy of the foregoing was served by U.S. Mail on Registrant Gary D. Osborn at the following address:

Gary Osborn d/b/a Apothecure, Inc.
4001 McEwen Road, Suite 100
Dallas, Texas 75244

A handwritten signature in black ink, appearing to read 'C.R. Ganter', is written over a horizontal line.

Christopher R. Ganter
Attorney for Tony M. Lamoureux

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark Registration No. **3971868**)
)
For the mark **LIPTONIX**)
)
Date registered May 31, 2011)
)
)
Tony M. Lamoureux,)
)
Petitioner,)
)
v.)
)
Gary D. Osborn)
)
Registrant.)

**AFFIDAVIT OF CHRISTOPHER R. GANTER IN SUPPORT OF
MOTION FOR ENTRY OF DEFAULT**

Before me, the undersigned Notary Public, authorized by law to administer oaths, appeared Christopher R. Ganter, who swore of his personal knowledge that the following facts were true:

1. That he is an attorney for the Petitioner in the above-styled cause and has personal knowledge of the facts set forth in this affidavit.
2. On April 24, 2012 Petitioner Tony M. Lamoureux filed a Petition to Cancel the mark LIPOTONIX with the Trademark Trial and Appeal Board. (See TTABVUE Cancellation No. 92055515).
3. On April 24, 2012, Petitioner's counsel served by U.S. Post Office Express Mail a copy of said Petition to Cancel. (See U.S. Express Mail Label and Receipt, attached hereto as Exhibit 1-A).

PETITIONER
EX. 1

4. On April 25, 2012 Registrant Gary D. Osborn d/b/a Apothecure, Inc., or an authorized agent, was served with a copy of the said Petition to Cancel and was signed for by a B. McDonald at the address provided to the USPTO by the Registrant. (See www.usps.com track and confirm for Mail Label EG883702522US, attached hereto as Exhibit 1-B).

4. More than 40 days have passed from the filing of the Petition to Cancel and Registrant has failed to answer, plead or otherwise defend in this action. Petitioner is entitled to an entry of default pursuant to Federal Rules of Civil Procedure 55(a). (See TTABVUE filings for Cancellation No. 92055515).

5. Petitioner is entitled to the entry of default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.


6. This affidavit is executed by affiant herein in accordance with Federal Rule of Civil Procedure 55 for the purpose of enabling Petitioner to obtain an entry of default against the Registrant.


CHRISTOPHER R. GANTER

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

Subscribed and sworn to before me this 5th day of June, 2012 by said Affiant.

[NOTARY SEAL]


Notary Public

My Commission Expires: _____

MY COMMISSION EXPIRES AUGUST 22, 2015



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Time Accepted 2:16 PM	Scheduled Time of Delivery <input checked="" type="checkbox"/> Noon <input type="checkbox"/> 3 PM	COD Fee \$	Insurance Fee \$
Flat Rate <input type="checkbox"/> For Weight 3.0 lbs.	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Total Postage & Fees \$ 18.95	
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Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		

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Federal Agency Acct. No. or Postal Service Acct. No.	
<input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Matter Signature

FROM: (PLEASE PRINT) C. R. GANTER 5184 CROWELL MILL ROAD BIRMINGHAM, AL 35242	PHONE () 352-444-445
--	--------------------------

TO: (PLEASE PRINT) GARY D. OSBORN 1/B/A ARCHITECTURE, INC. 4001 MCKENNA FORD, SUITE 100 DALLAS, TEXAS	PHONE ()
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PETITIONER
Ex. 1-13